Syed Azman bin Syed Mohamed v Lian Seng (KL) Construction Co Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S7-22-776-1989
LIM BENG CHOON J
10 SEPTEMBER 1992

Contract *— Specific performance — Agreement for sale of parcel of multi-storey building — Specific performance of delivery of strata title — Whether purchaser could apply to court to compel vendor to apply for sub-division of building and obtain strata title for parcel — Whether purchaser was seeking specific performance of penal law — Strata Titles Act 1985 ss 8 & 10 — Specific Relief Act 1950 s 6*

Land Law *— Strata title — Duty of vendor to apply for sub-division of multi-storey building and obtain strata title — Plaintiff purchased a parcel of multi-storey building — Failure of vendor to apply for sub-division of building — Whether vendor was under contractual and statutory duties to apply for sub-division of building and to obtain strata title for plaintiff — Time within which vendor should apply for sub-division — Strata Titles Act 1985 ss 8 & 10 — National Land Code 1965 s 151A*

Statutory Interpretation *— Legislative history — Whether reference could be made to explanatory statement to Bill — National Land Code 1965 s 151A — Strata Titles Act 1985 ss 8 & 10*

In March 1971, the plaintiff entered into an agreement with the defendants to purchase the third floor of a proposed five-storey building ('the agreement'). The building was completed in 1973 and the plaintiff paid the full purchase price under the agreement. To date, the strata title for the third floor had not been delivered to the plaintiff by the defendants. The plaintiff filed a suit against the defendants claiming for, inter alia, specific performance of the immediate delivery of the strata title to the third floor pursuant to the agreement. The plaintiff applied to the High Court for summary judgment under O 81 of the Rules of the High Court 1980.

The defendants firstly contended that s 8 of the Strata Titles Act 1985 ('the Act'), which was relied on by the plaintiff, was a penal law and the plaintiff could not therefore seek specific performance of a penal law according to s 6 of the Specific Relief Act 1950. The defendants then argued that it was incapable of specifically performing the delivery of the strata title to the plaintiff because the six-month period specified in s 8(2)(b) of the Act had expired and under s 8(4) of the Act, the Director of Lands and Mines ('the director') could only grant one extension for a further period not exceeding three months upon an application made before the expiry of the six-month period. The defendants therefore claimed that it was too late for the court to order the defendant to apply for sub-division of the building and to obtain the strata title for the third floor.

Held, allowing the application:

(1) It was clear from the agreement that the defendants, as vendor, were contractually obliged not only to take all necessary steps to

carry out sub-division of the building but also to obtain a separate title for each of the sub-divided units. Accordingly, the defendant was bound under the agreement to procure the strata title for the third floor sold to the plaintiff.

(2) There was no evidence to show that the defendants had made any application for the strata title for the third floor. On this ground alone, judgment should be given to the plaintiff.

(3) A scrutiny of an explanatory statement to a Bill is permissible within certain limits.

(4) From the legislative history of the enacting of the National Land Code 1965 ('NLC') and the Act, it was clear that even under the NLC, as amended on 29 May 1981, the defendants were under a statutory duty to acquire a separate title for the third floor. The defendants should have done so on or before 29 November 1981, that was six months from 29 May 1981, the date on which s 151A of the NLC came into force.

(5) By 1 June 1985 when the Act came into force, the defendants were enjoined by s 8 of the Act read with s 10 of the Act to apply for sub-division of the building and thereafter, a strata title would be issued in the plaintiff's name as registered proprietor of the sub-divided parcel of the building.

(6) On 23 February 1990 when s 8 of the 1985 Act was amended by the Strata Titles (Amendment) Act 1990, the defendants were again enjoined to sub-divide the building within six months from the commencement of the 1990 Act.

(7) The sole purpose of the plaintiff asking for specific relief was to enforce his civil rights and not for the mere purpose of enforcing a penal law.

(8) As long as the proprietor fails to comply with s 8(1) of the Act in failing to apply for sub-division of the building, he would be considered as having committed an offence under s 8(5) of the Act and he could be penalized with a fine for each day the offence continues to be committed. Upon payment of the fine, the proprietor can thereafter apply to the director for sub-division of the building, and the director still has the power under s 8(1) of the Act to deal with such an application even after the expiry of the six-month period. Accordingly, the defendants' contention that it could not be compelled to apply for sub-division of the building and to obtain the strata title for the third floor could not be accepted.

(9) The defendants were ordered to apply for sub-division of the building within one month from the date of this judgement and upon the grant of the strata title for the third floor, the same should be delivered to the plaintiff.

[Bahasa Malaysia summary

Pada Mac 1971, plaintif telah mengikat perjanjian dengan defendan untuk membeli tingkat ketiga sebuah bangunan lima tingkat ('perjanjian itu'). Bangunan itu telah siap pada 1973 and plaintif telah membayar

harga pembelian dengan penuh di bawah perjanjian itu. Hingga sekarang, hakmilik strata untuk tingkat ketiga belum lagi diserah kepada plaintif oleh defendan. Plaintif telah memfailkan guaman terhadap defendan menuntut, antara lain, pelaksanaan spesifik untuk penyerahan segera hakmilik strata tingkat ketiga menurut perjanjian itu. Plaintif telah memohon kepada Mahkamah Tinggi untuk penghakiman terus di bawah K 81 Kaedah-Kaedah Mahkamah Tinggi 1980.

Defendan pertamanya, telah berhujah bahawa s 8 Akta Hakmilik Strata 1985 ('Akta itu'), kepada mana plaintif telah bergantung, adalah undang-undang penal and plaintif tidak boleh meminta pelaksanaan spesifik suatu undang-undang penal menurut s 6 Akta Relief Spesifik 1950. Defendan kemudiannya berhujah bahawa ia tidak dapat melaksanakan dengan spesifik penyerahan hakmilik strata itu kepada plaintif kerana tempoh enam bulan yang telah ditetapkan di dalam s 8(2) Akta itu telah tamat dan di bawah s 8(4) Akta itu, Pengarah Tanah dan Lombong ('pengarah itu') hanya boleh memberi satu perlanjutan masa bagi tempoh tidak lebih daripada tiga bulan apabila permohonan dibuat sebelum tamatnya tempoh enam bulan itu. Oleh itu, defendan telah mengatakan bahawa sudah terlambat untuk mahkamah memerintah supaya defendan memohon untuk bangunan itu disubbahagikan dan untuk mendapat hakmilik strata bagi tingkat ketiga itu.

Diputuskan, membenarkan permohonan itu:

(1) Adalah jelas daripada perjanjian itu bahawa defendan, sebagai penjual, berobligasi secara kontrak bukan sahaja untuk mengambil semua langkah yang perlu untuk melaksanakan subbahagian bangunan itu tetapi juga untuk mendapat hakmilik yang berasingan untuk setiap unit yang telah disubbahagikan. Oleh, itu, defendan terikat di bawah perjanjian itu untuk mendapatkan hakmilik strata bagi tingkat ketiga yang telah dijual kepada plaintif.

(2) Tidak terdapat keterangan yang menunjukkan bahawa defendan telah membuat sebarang permohonan untuk hakmilik strata bagi tingkat ketiga itu. Atas alasan ini sahaja, penghakiman sepatutnya diberi kepada plaintif.

(3) Penelitian huraian Rang Undang-Undang dibenarkan tetapi ada had tertentu.

(4) Dari sejarah perundangan tentang penggubalan Kanun Tanah Negara 1965 ('KTN') dan Akta itu, adalah jelas bahawa di bawah KTN itu, seperti yang dipinda pada 29 Mei 1981, defendan berada di bawah kewajipan statutori untuk mendapatkan hakmilik berasingan untuk tingat ketiga itu. Defendan sepatutnya telah membuat demikian pada atau sebelum 29 November 1981, iaitu enam bulan daripada 29 Mei 1981, tarikh pada mana s 151A KTN itu dikuatkuasakan.

(5) Menjelang 1 June 1985 apabila Akta itu dikuatkuasakan, defendan telah di suruh oleh s 8 Akta itu dibaca dengan s 10 Akta itu untuk memohon supaya bangunan itu disubbahagikan dan kemudiannya

hakmilik strata akan dikeluarkan dalam nama plaintif sebagai tuan punya berdaftar subbahagian bangunan itu.

(6) Pada 23 Februari 1990 apabila s 8 Akta 1985 itu dipinda oleh Akta Hakmilik Strata (Pindaan) 1990, defendan sekali lagi di suruh mensubbahagikan bangunan itu dalam tempoh enam bulan dari permulaan Akta 1990 itu.

(7) Tujuan tunggal plaintif meminta pelaksanaan spesifik adalah untuk menguatkuasakan hak sivilnya dan bukan hanya setakat menguatkuasakan undang-undang penal.

(8) Asalkan tuan punya bangunan itu gagal mematuhi s 8(1) Akta itu apabila gagal memohon supaya bangunan itu disubbahagikan, beliau akan dianggap telah melakukan suatu kesalahan di bawah s 8(5) Akta itu dan beliau boleh dihukum denda untuk setiap hari kesalahan itu dilakukan berterusan. Apabila denda dibayar, tuan punya bangunan itu boleh seterusnya memohon kepada pengarah itu supaya bangunan itu disubbahagikan, dan pengarah itu masih mempunyai kuasa di bawah s 8(1) Akta itu untuk melayani permohonan itu walaupun tempoh enam bulan telah tamat. Oleh itu, pendapat defendan bahawa ia tidak boleh dipaksa untuk memohon supaya bangunan itu disubbahagikan dan untuk mendapat hakmilik strata untuk tingkat ketiga itu tidak boleh diterima.

(9) Defendan telah diperintahkan untuk memohon supaya bangunan itu disubbahagikan dalam tempoh satu bulan dari tarikh penghakiman ini dan apabila hakmilik strata untuk tingkat ketiga telah diberi, ianya patut diserahkan kepada plaintif.]

Cases referred to

1 *Pang Choon Kong v Chew Teng Cheong* 4 PCC 231 (folld)
2 *Peer Mohamed VM v Great Eastern Life Assurance Co Ltd* 4 PCC 399 (folld)
3 *State of West Bengal v Union of India* AIR 1963 SC 1291 (folld)

Legislation referred to

National Land Code 1965 ss 151, 151A, 152–157
Specific Relief Act 1950 ss 6, 18
Strata Titles Act 1985 ss 6, 8(1), (2)(b), (4), (5), 10
Strata Titles (Amendment) Act 1990
Rules of the High Court 1980 O 81

Rueben Mathiavaranam (*Azman Davidson & Co*) for the plaintiff.
MS Murthi (*Murthi & Partners*) for the defendants.

Cur Adv Vult

Lim Beng Choon J: In this suit, the plaintiff is claiming for specific performance of a sale and purchase agreement dated 23 March 1971 ('the agreement') pursuant to which the plaintiff purchased and the defendants sold the third floor of a proposed five-storey building ('the building') to be built on Lot 395 s 57 in the Town and District of Kuala Lumpur. The

building was duly completed in or around 1973 and the plaintiff paid the full purchase price of $20,900 but to date, no strata title for the third floor has been delivered to the plaintiff by the defendants. The plaintiff alleged that the defendants, in contravention of the then s 151A of the National Land Code 1965 ('NLC') and/or s 8 of the Strata Title Act 1985 ('the Act'), had and still have wrongfully failed and refused to deliver the strata title of the third floor to the plaintiff; neither did they take any positive steps towards the delivery of the said strata title despite numerous requests from the plaintiff. The plaintiff therefore prays for specific performance of the immediate delivery of the strata title of the third floor. Alternatively, the plaintiff prays for damages for non-delivery of the said strata title in addition to or in alterations (?) for specific performance under s 18 of the Specific Relief Act 1950. The words 'in alterations' have been wrongly used and the correct words should be 'in substitution'.

This suit was filed on 3 October 1989 and after the defendants had entered appearance, the plaintiff took out a summons-in-chambers on 15 December 1989 for an order of the court pursuant to O 81 of the Rules of High Court 1980 for specific performance of the immediate delivery of the strata title of the third floor of the building known as No 52-C Jalan Sultan Ismail, Kuala Lumpur which is held under Grant 9495, Lot 1138 pursuant to the agreement. It is to be noted that the title of the land in dispute as mentioned in the summons differs from the title stated in para 1 of the statement of claim of the plaintiff. I mention this difference at the outset since the defendants raised this difference as an issue in their defence.

The defence of the defendants as set out in their statement of defence filed on 17 January 1990 may be summarized as follows:

(a) the agreement was governed by the NLC and not the Act and the legal interest and title of the land in question was vested in the defendants under the NLC;
(b) the conveyance referred to in cl 15 of the agreement was not a strata title but merely an interest in the undivided shares of the said land;
(c) the defendants are incapable of specifically performing by delivering a strata title to the plaintiff and the latter is in any event not entitled to the said relief;
(d) the defendants have done its utmost to procure the issuance of separate titles but the approval has not been granted by the appropriate authorities; and
(e) in the alternative, the plaintiff has no title to sue as he has assigned all its interests to a third party.

The defendants then conclude their defence by saying that they are willing to rescind the agreement and to refund the purchase price of $19,900 with nominal interest.

From my scrutiny of the pleadings of the respective parties, the summons-in-chambers of the plaintiff, the affidavits of the plaintiff in support of his case and the affidavits of the defendants in opposing the plaintiff's application, the main issue posed to this court for consideration is whether the defendants are enjoined by law to procure the said strata title for the

plaintiff and upon issuance of the said strata title, to transfer the same to the plaintiff.

In considering the aforementioned issue, it is necessary in the first place to examine the agreement (exh SASM1). It is stated in the last recital that:

> And whereas the vendors intend applying for approval for sub-division of the said land leading to the *issue of a separate title* to each floor of the said building ... (Emphasis provided.)

Clause 6(b) likewise provides

> The vendors shall at their own cost charge and expense —
>
> (a) ...
>
> (b) upon the execution of this agreement apply for and use their best endeavour and take all necessary steps to obtain approval for the sub-division of the said land or as the case may be the said building under the provisions of the NLC so as to lead *to the issue of a separate title to the said* property. (Emphasis added.) (It is also to be noted the third floor purchased by the plaintiff is referred to in the agreement as 'the said property').

Finally, there is cl 15 which says that provided the purchaser has paid the full purchase price and duly observed and performed the various terms and conditions and stipulations under the agreement:

> the Vendors shall within 14 days of such payment as aforesaid on the issue of the relevant document of title whichever shall be the later execute a valid and registrable transfer of the same in favour of the purchaser's nominee free from all encumbrances and *shall deliver to the purchaser the said documents of title to the said property*. (Emphasis added.)

To my mind, reading cll 6(b) and 15 in the light of the aforementioned recital, it is clear that the parties to the said agreement agreed that the defendants, as vendor, are contractually obliged not only to take all necessary steps to carry out the subdivision of the said building but also to obtain a separate title for each of the subdivided units which can only mean strata title for each of the subdivided units. It is trite law that when the language of a contract is clear and precise, the court must give effect to the intention of the parties (see *Pang Choon Kong v Chew Teng Cheong*[1] and *Peer Mohamed VM v Great Eastern Life Assurance Co Ltd*[2]).

This proposition is supported by the averment of the defendants in their statement of defence and confirmed by the affidavit in reply of Dato Wong Kee Tat, the director of the defendants, affirmed on 11 April 1990 where it was said that the defendants have done its utmost to procure the issuance of separate titles. If that be so, this averment is incompatible with the defendants' suggestion that they are not contractually bound to obtain strata titles for the individual subdivided units bearing in mind that in taking steps to procure such titles, the defendants would have to incur expenses. I therefore hold that the defendants are bound under the agreement to procure the strata title in respect of the said property sold to the plaintiff. Furthermore, as averred by the plaintiff in his affidavit in support of his application dated 8 December 1989, the defendants had not at least up to 19 January 1988, made any application to the Pengarah Jabatan

Tanah Wilayah for a strata title in respect of the said property (exh SASM3). There is also no evidence to show that the defendants have, from January 1991 till even today, made any such application for strata title. On this ground alone, judgment should be given to the plaintiff.

With regard to the alternative defence of the defendant by which they claimed that they are 'incapable of specifically performing by delivering a strata title to the plaintiff', it is to be noted that this defence is based on the defendants' allegation that the agreement was governed by the NLC and not the Act and under the NLC, the conveyance of the beneficial interest to the plaintiff could only be confined to an interest in the undivided shares of the land in question (see paras 4–7 of the affidavit of Dato Wong Kee Tat affirmed on 11 April 1990). Hence, according to the defendants, the plaintiff's claim is misconceived. In considering this issue, it is necessary to examine the legislative history of the enacting of the NLC and the Act.

I have taken upon myself to scrutinize the explanatory statement introducing the National Land Code Bill. Before doing so, I have examined the law to see whether the said explanatory statement could be looked at in considering the issue raised by the defendants. It has been held that a scrutiny of an explanatory statement to a Bill is permissible within certain limits. Thus in Bindra's *Interpretation of Statutes* (7th Ed) at pp 387–388 it is stated:

> The statement of objects and reasons may not be used for the purpose of construing the meaning of a particular word in an enactment, yet it can be referred to, for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which is sought to be remedied. While the statements and objects cannot be used as aids to construction they can be used for the limited purpose of understanding the background and antecedent state of affairs leading up to the legislation, of finding the object of the legislature in enacting the statute where all other methods of interpretation fail, and also in order to find out what was the mischief which the legislation is aimed at. Such a statement can legitimately be referred to for correct appreciation of —
>
> (i) what was the law before the Act was passed;
> (ii) what was the mischief or defect for which the law had not provided;
> (iii) what remedy the Legislature had appointed; and
> (iv) the reasons for the remedy.

If it is necessary to cite a decided case, I would refer to the case of *State of West Bengal v Union of India*.[3]

It was stated in the explanatory statement introducing the National Land Code Bill that the whole of ch 4 of Pt Nine Sub-Division of Building was entirely new. It comprised of cll 151–157 and its purpose was to enable large buildings to be sub-divided internally into 'parcels' so that separate titles could be issued to individual flats, office, suites, etc. Clause 151 enacted the machinery for the proprietor of any alienated land held as one lot to apply to the State Director of Land to sub-divide into parcels, each to be held by him under a separate subsidiary title, any building thereon having two or more storeys wholly above ground level. This cl 151 was subsequently passed and duly enacted as s 151 of the NLC. Thus it can be seen that even in 1965 when the NLC was enacted, there was already in

existence provision for the issue of separate subsidiary titles for individual flats, offices, suites within a large building.

It is to be noted that s 151 of the NLC is only an enabling provision in that it afforded a machinery whereby owners of the land on which multi-storey buildings had been built would be able to obtain separate subsidiary titles to purchasers of the internal subdivided parcels of the buildings. The owners of such land were under no statutory compulsion to obtain the subsidiary titles. However on 29 May 1981, the said ch 4 of Pt Nine was amended with the insertion of a new s 151A which provided a time frame within which an application for the sub-division of multi-storey building into separate parcels which had been sold to a purchaser must be made. Failure on the part of the owner of the land to do so was an offence and the owner was liable, on conviction, to a fine.

Sections 151–157 of the NLC were repealed by the Act with effect from 1 June 1985. Section 6 of the Act provides for the sub-division of any buildings having two or more storeys on alienated land held as one to be internally sub-divided into individual units or parcels. Section 8(1) thereof compelled the owner of such alienated land to apply for sub-division of any two or more storeys building built thereon into separate parcels pursuant to s 10 if at any time he had sold or agreed to sell any such parcel to any person and the application should be made within the prescribed periods as provided in s 8(2). A sub-division under s 10 would ultimately lead to the issue of a strata title to each sub-divided parcel.

On 23 February 1990 the Strata Titles (Amendment) Act 1990 came into force by which a number of amendments were made to the Act. The amendment to s 8(2) relevant to the present case reads as follows:

> The period within which the requirement of subsection (1) shall be complied with is as follows:
>
> (a) ...
> (b) in the case of a building completed on a date before the commencement of this subsection —
>
> (i) if the sale of or agreement to sell any parcel of the buildings, or the first of such sales or agreements took place before that date, the period is six months from the commencement of this subsection.

From the above legislative history of the enacting of the NLC and the Act, it is clear that even under the NLC as amended on 29 May 1981, the defendants were under a statutory duty to acquire a separate title for the said property purchased by the plaintiff. The defendants should have done so on or before 29 November 1981, that is six months from 29 May 1981, the date in which s 151A of the NLC came into force. By 1 June 1985 when the Strata Titles Act 1985 came into force, the defendants were enjoined by s 8, read with s 10 thereof, to apply for the sub-division of the building and thereafter a strata title would be issued in the name of the plaintiff as registered proprietor of the sub-divided parcel of the building. On 23 February 1990, when s 8 of the Act, was amended, the defendants were again enjoined to sub-divide the building within six months from the commencement of the Strata Titles (Amendment) Act 1990.

From the above discussions, it is clear that the defendants are enjoined by contractual obligations as well as statutory provisions to have the building sub-divided leading to the issue of the strata title to the plaintiff. It has been argued by counsel for the defendant that the plaintiff could not rely on s 8 of the Act to seek specific performance as the said s 8 is a penal law and s 6 of the 'Specific Relief Act 1950 provides: Specific relief cannot be granted for the mere purpose of enforcing a penal law.'

This argument of learned counsel is, to say the least, misleading. In the present case, the plaintiff does nothing more than to enforce his rights under the agreement to require the defendants to apply for sub-division of the portion of the five-storey building purchased by him under the agreement. In referring to s 8 of the Act he merely points out to this court that the defendants' contractual obligation to obtain a strata title is reinforced by statutory provisions. Hence the sole purpose of his asking for specific relief is to enforce his civil rights and not, I repeat not for the mere purpose of enforcing a penal law. Another point taken up by counsel for the defendants is that while the title of this land in question was described in the agreement as Certificate of Title 13462 Lot 395 section 57 Town & District of Kuala Lumpur, the plaintiff in his statement of claim described the said land as Lot No 395 section 57 in the Town & District of Kuala Lumpur. To compound the confusion, the plaintiff in the summons-in-chambers dated 15 December 1989, described the title of the said land as Grant 9445, Lot 1138. Counsel therefore suggested that the plaintiff had failed to identify the land which formed the basis of his case.

The short answer to the second point taken up by counsel for the defendant is that the contentions raised by him in his submissions were never pleaded in the defendants' statement of defence. Neither were the contentions mentioned in the affidavit in reply of Dato Wong Kee Tat dated 13 April 1990. On the contrary, the defendants in their statement of defence admitted to the averment of the plaintiff that the five-storey building was built on Lot No 395 section 57 in the Town & District of Kuala Lumpur. Their main defence, as stated earlier, is that the defendants are not obliged under the agreement to acquire the strata title for the said property and in any event, they had already applied for the strata title but no approval had been obtained from the appropriate authorities. As to their first contention that they are not obliged to acquire the strata title, I have already dealt with this issue and I need say no more than that the defendants are wrong. As to the identity of the land in question, the plaintiff has in affirming his further affidavit III given an explanation by producing exh SASM6 annexed thereto, which shows that the original title of the said land was CT 13462 Lot 395 section 57 and on 5 November 1985, this title was replaced by Grant 9445 Lot 1138 section 57 Bandar Kuala Lumpur. Bearing in mind that the agreement was executed in 1971, it therefore described the land in question as held under the original title and not the replacement title. I think this is sufficient answer to the contention raised by the defendants counsel.

One last point raised by the defendants is that the defendants are incapable of specifically performing the delivery of a strata title to the

plaintiff.By this, I take it that they are relying on the fact that even if they are obliged to apply for sub-division of the building, they cannot do so now since the six-month period specified in s 8(2)(b) of the Act had expired as at 23 August 1990 and under s 8(4) of the Act, the Director of Lands and Mines could only grant one extension for a further period not exceeding three months upon an application made to him *before* the expiry of the original six-month period. It is therefore suggested that it is now too late for this court to order them to specifically perform their obligation to apply for a sub-division of the building and to obtain the strata title of the third floor purchased by the plaintiff. This contention of the defendants is, to my mind, totally without any merit. The said sub-s (4) should not be read in isolation. It should be read with the other sections of the Act in particular s 8(5). Read in this way, I have no doubt that the Act provides that:

(1) the proprietor is allowed six months from 23 February 1990, when the amendment to s 8 of the Act came into effect, to apply for sub-division of the building pursuant to s 8(1) of the Act;

(2) should the proprietor fail to do so within the stipulated period he could apply to the Director of Lands and Mines for an extension and the said director is empowered to grant him one extension not exceeding three months provided the application is made prior to the expiry of the stipulated six-month period;

(3) should the proprietor fail to carry out the sub-division of the building within the extended three-month period or should the proprietor fail to apply at all for the sub-division of the building thereby contravening s 8(1) of the Act, then he is liable to be charged for an offence under s 8(5);

(4) when the proprietor is so charged and is convicted he would have to pay the penalty as set out in s 8(5);

(5) upon payment of the fine imposed by s 8(5), the proprietor can thereafter apply to the Director of Lands and Mines pursuant to s 8(1) and (2) for the sub-division of the building leading to the issue of a strata title under s 10 of the Act;

(6) the Director of Lands and Mines has power under s 8(1) to deal with an application made by a proprietor who have been convicted of an offence and who has duly paid the fine imposed by s 8(5).

In support of propositions (5) and (6), one should take note of the penalty clause where it is provided that a proprietor convicted of an offence under s 8(5) is penalized with a lump sum fine not exceeding $5,000 and with a further fine not exceeding $1,000 *for each day the offence continues to be committed.* Bearing in mind that as long as the proprietor fails to comply with s 8(1), he would be considered as having committed an offence under the said sub-s (5) for the whole period in which he fails to comply with s 8(1) and he could be penalized with a fine of $1,000 per day. That being the case, the proprietor would be placed in a ridiculous position if one were to construe s 8(4) to mean that the Director of Lands and Mines has no power to deal with an application for sub-division after the six-month period stipulated in s 8(2)(b) has terminated. I cannot, therefore, accept the

contention of the defendants when they say that they cannot be compelled to specifically perform their obligations to apply for sub-division of the building and to obtain a strata title for the third floor.

For the above reasons, the application of the plaintiff by way of summons-in-chambers dated 15 December 1989 is allowed. The defendants are ordered to apply for the sub-division of the said building to the appropriate authority within one month from the date of this order. Upon the grant of the strata title for the third floor purchased by the plaintiff, the same shall be delivered to the plaintiff forthwith. Costs of the proceedings are to be paid by the defendants.

Application allowed.

Reported by Wong Kian Kheong